

## NEEDHAM PLANNING BOARD MINUTES

December 1, 2009

The regular meeting of the Planning Board held in Selectmen's Meeting Room at Town Hall, was called to order by Jeanne McKnight, Chairman, on Tuesday, December 1, 2009 at 7:30 p.m. with Messrs. Warner, Ruth, Eisenhut and Jacobs as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

### Public Hearings

#### 7:30 p.m. – Discussion of interpretation of Definitive Subdivision Plan Approval, Paul V. Ferreira, Petitioner (Property located at 342 Cartwright Road, Needham, MA).

George Giunta Jr., representative for the applicant, spoke with the Board in August. This is a one lot subdivision. One new building lot was approved in 2005 by the Planning Board. He noted this is a unique location with the utilities provided by Wellesley. They got an extension from the Board as they have been back and forth over documents. The 50 foot wide restriction did not seem like it would be an issue. They thought it would be a simple no build restriction. They received Conservation Commission approval. The house has been laid out and the drive was located within the buffer. The restrictions as written would not allow the drive. He asked the Board for interpretation and clarification. He feels the restriction is stronger than required by the decision. There was a 25 foot setback in 2005 and there was no issue with a 50 foot setback at the time. He would like the Board to interpret the decision and change the restriction to allow for driveways as shown on the plan. Mr. Giunta Jr. passed around pictures he had taken today. He noted there was a line of spruces along the property line on this property and the driveway is inside the line of vegetation. It is a very effective screen. Mr. Jacobs noted paragraph 2D, in the 9/6/09 meeting minutes, and asked where is the language that goes the other way. Mr. Giunta Jr. noted the language in the restriction. Mr. Eisenhut asked if there was any discussion regarding the 50 foot setback with respect to the wetlands. Mr. Giunta Jr. stated there was a lot of discussion regarding drainage and noted  $\frac{3}{4}$  of the house is in the buffer zone. Mr. Eisenhut asked if it is possible to make the drive pervious if allowed. Mr. Giunta Jr. noted he did not think that was an issue any more.

George Giunta Sr. noted the drainage had to be approved by the Town Engineer. They had to redesign it so it could never be paved. It has to remain gravel so the proposed drive would have to be gravel. Mr. Jacobs asked how the language got changed. Mr. Giunta Jr. noted at the same time another subdivision was being approved and it was felt they should be the same. They did not think it would matter. Mr. Ruth clarified this was not a mistake argument but overly generous. Mr. Giunta Jr. noted yes. He negotiated the document actually. Ms. Newman stated there is an infiltration trench along one side. Mr. Giunta Jr. noted the documents were not recorded due to this issue. He would like to strike the word "driveway" to allow a drive. Mr. Jacobs clarified there was a specific request to strike the word "driveway" from the 3<sup>rd</sup> line of the 3<sup>rd</sup> paragraph of the grant. Roy Cramer, with Clare Lesser, an immediate abutter, stated they have a different view of this. A stand of trees separates the property and may be 30 feet wide. The Lesser's bedroom is close to the lot line, then there is a stand of trees, then the meadow with a 50 foot restricted area. They feel the restriction should stay the same. It is a life style point of view to maintain a 50 foot undisturbed area. They could design the house so the drive is out of the 50 foot zone. The covenant was negotiated and signed by Mr. Ferreira, brought to the Planning Board, and then accepted by the Selectmen. The restriction, as written, protects the Lees and Lessers. If they agree to change it they would have to go back to the Selectmen and maybe Town Meeting. He added there is no plan that shows the location of the tree stand. It would interfere with the Lessers and Lees lifestyles. He feels it is very important the restriction should stay. Mr. Jacobs noted the question is what did the Planning Board intend in 2005. Mr. Ruth noted the grant was not a mistake. He asked if there were compelling circumstances to change it. Mr. Warner asked why this location was chosen. There is plenty of land.

Mr. Ferreira noted there was a public discussion. Mr. Lesser asked for a 50 foot setback rather than a 25 foot setback and he agreed. The trees will remain. It was a no build area and he does not know how it changed to a no disturb area. The spruce trees are about 55 feet high and he cannot see the Lesser house from his. The drive runs at some point within the 50 foot zone. Ms. McKnight noted she feels the covenant intentionally went further due to the Planning Board concern for the trees. No one has ever shown a plan with the location of the trees. She would like to see the location of the trees as they are being asked to make a decision and maybe get the opinion of an arborist.

regarding the trees. Mr. Warner noted the trees are not in perpetuity. The screen is there now but there is no guarantee they will always be there. Mr. Cramer stated they are protecting the habitat. Mr. Jacobs agrees with Ms. McKnight that maybe an opinion from an arborist and a plan with the locations of the trees is necessary. Mr. Ruth stated he had zero appetite to hear any more. This was signed years ago. A deal was made. They have spent an hour here. The applicant can come in for a waiver but he has not heard any reason for a waiver. He does not want to get into a reevaluation of this and is against any further discussion. Mr. Eisenhut commented he has not heard any reason to do this and asked if it was a matter of convenience. Mr. Giunta Jr. stated it is a matter of aesthetics and convenience. It makes sense at this location. Mr. Ruth made a motion to deny the request. There was no second. Ms. McKnight stated it should be determined by Town Counsel and probably go to Town Meeting. Mr. Eisenhut stated they should put it on the next agenda for an internal discussion.

**7:45 p.m. – Informal Discussion regarding proposed Amendment: Major Project Site Plan Special Permit No. 2000-02 Amendment: Sentinel Properties, Needham, LLC, c/o Rose Associates, One Financial Center, Boston, MA, Petitioner (Property located at 128 First Avenue and 72 A Street, Needham, MA).**

Ms. Newman has provided a schedule of how the parking has been distributed up to now. Roy Cramer, representative for the applicant, noted this is the Level 3 building and is now a data protection system. It has a 193 space parking lot. They have leased the building. With the parking count, 158 or 160 spaces are already spoken for but one tenant can give back 30 emergency spaces. They need to put in a new chiller system. The more people and computers that are put in the more air conditioning is needed. There is no room inside the building but they have identified a place of where it should go on the north side of the building. It will not add any parking demand. They need to pull the trigger on ordering this huge piece of equipment. It is 2,650 square feet. Mr. Jacobs asked how tall it was and was informed approximately 33 feet – 10 to 11 feet for the cooler and then 20 feet above. Mr. Warner asked if there was no room on the roof. Paul Finger noted the roof has some coolers there but structurally this needs to be on the ground. It will be in the far corner of the parking lot, screened from sight. It is down in the lower area sitting on the same grade as the parking lot. This is the most sensible location. They have done an acoustical study and noise generation will not be an issue. It will not generate traffic. The building is 100 percent tenanted at this point.

Mr. Cramer noted he wanted thoughts from the Board. They have 193 spaces. The chiller will take 23 spaces for 170. They will give away 188 spaces with the ability to take back 30 for 158 or 160. That gives them a surplus of 10. With 4 or 5 security people, they still have enough. The chiller is so big it has a door for the service guy to go in and service it. They would like a waiver of 23. Mr. Jacobs noted 23 is fine with him and Mr. Ruth agreed. Mr. Cramer noted the plans are about ready to be filed. Ms. McKnight stated she was not sure what discretion they have. She noted it would be helpful to have a little more analysis when he comes in as to why they want this. Mr. Cramer stated he would do the analysis. It is a non-conforming structure. The NE Business District FAR is .4 up to 1.0. Presently they are at .74 and will go up to .76. If the FAR goes up they will need to pay into the traffic mitigation fund. He asked how he should handle that issue. Generators are not included in the FAR. Ms. McKnight noted she would like to see how they can manage that under the Zoning By-Law. Mr. Cramer stated it is a mechanical system. It should not be counted in the FAR but he wants to get it right in the application. Mr. Ruth noted mechanical space, within the confines of the By-Law, does not generate traffic or parking but it will be there a long time. He would like to see it incorporated into the plan when they come back, with landscaping, screening, etc. Mr. Eisenhut commented he should look at the definition of building again and make sure it is not a structure. Ms. Newman noted they need to clarify the occupancy on the first floor and a number of landlord employees.

**8:00 p.m. – Informal Discussion: Needham High School, Town of Needham, 470 Dedham Avenue, Needham, MA, Petitioner (Property located at 609 Webster Street, Needham, MA).**

Steve Popper, representative for the applicant, noted they are trying to close up the permit on the High School. The conclusion of the As-Built is the last item: The FAR question came up. This needs to be done by a land surveyor. This has been done and he has the matrix mirrored on the As-Built. The maximum height is 68.3 feet. They had indicated it would be 67 feet so this is different. Jim Paris, architect, noted he has assembled information based on the existing documentation and, based on this, calculated the maximum height calculation. The actual calculations were more and the new calculations are reflected in the zoning documents. Ms. Newman noted they anticipated the height would be 67.3 but it is 68. She asked how they should deal with this – amend the decision or make it a de minimus change. Mr. Eisenhut noted they did an amendment for Panera Bread. Mr. Paris stated the maximum height is based on the existing building not the new addition. He noted they need to close out the funding. Mr. Ruth suggested they

direct the Building Inspector to issue a final Certificate of Occupancy not withstanding the unobjectionable differences. Ms. Newman noted they should authorize the final based on the inspection and include a paragraph explaining the discrepancy. Mr. Warner suggested inaccurate documents at the opening of the work. Mr. Paris noted the inaccuracy is the information on the existing building. Mr. Eisenhut noted he is ok with the letter as long as it is fully disclosed. Mr. Paris is ok with a letter.

**Extension of Temporary Occupancy Permit – Major Project Site Plan Review No. 2004-01: Needham High School, Town of Needham, 470 Dedham Avenue, Needham, MA, Petitioner (Property located at 609 Webster Street, Needham, MA).**

Marvin Blaylock noted the temporary Certificate of Occupancy was expired. The accreditation committee requested this then disbanded. They may need it.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously VOTED: to extend the temporary Certificate of Occupancy to January 31, 2010.

**Plan Endorsement: Amendment to Major Project Site Plan Special Permit No. 1991-07: Gibbous Moon Inc., d/b/a The Center Café, Needham, PO Box 723, Natick, MA 01760, Petitioner (Property located at 1027 Great Plain Avenue, Needham, MA).**

Ms. Newman noted she does not have the final stamped drawing. She asked for authorization to sign and distribute to the Building Inspector for a permit when she has everything.

Upon a motion made by Mr. Warner, and seconded by Mr. Jacobs, it was by the five members present unanimously VOTED: to authorize the Planning Director to sign and distribute to the Building Inspector for a permit when she has everything.

**Release of Lot Endorsement: Definitive Subdivision Amendment: Standish Road Realty Trust, Alfred Volante, Trustee, 226 Brookside Road, Needham, MA, Petitioner (Property located at the end of Brewster Drive in Needham, MA).**

Ms. Newman noted this is a lot release from a covenant. The town bought 2 lots and the little lot is going to an abutter. Mr. Ruth recused himself.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Eisenhut, it was by the four members present unanimously VOTED: to release the lot from the covenant.

**Occupancy Permit: Major Project Site Plan Review No. 2009-03: FitFuture LLC d/b/a Koko Fit Club, 844-850 Highland Avenue, Needham, MA, Petitioner (Property located at 850 Highland Avenue, Needham, MA).**

Mr. Ruth returned to the meeting. Ms. Newman noted they want a permanent Certificate of Occupancy. She has received the drawings and certifications. The DPW has inspected. The handicap signs are not installed.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously VOTED: to authorize the Planning Director to issue a permanent Certificate of Occupancy when she is satisfied the signs have been installed.

**Correspondence**

Ms. Newman noted she received a letter with informal information regarding development of the theater block.

**Minutes**

Mr. Ruth noted on the first page, 2<sup>nd</sup> paragraph, should be “an” not “and”. On page 2, the Charles River Landing comments and motion were missing. It should read “a comment was made to waive the requirement only if the wells are dry.” Then the unanimous vote by Mr. Jacobs and seconded by Mr. Eisenhut voting “No comment”. The next

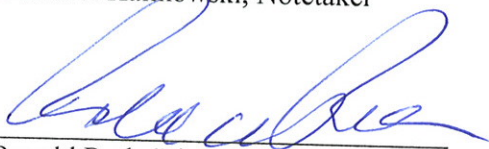
heading should be George and Angela Davos, 652 Great Plain Avenue, Needham, MA. Under that heading it should state "the structure should not have been knocked down" rather than "it should be knocked down". On page 3, "articles" should be added after "Wireless Communication".

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:  
VOTED: to accept the minutes of September 15, 2009 with changes.

Ms. McKnight passed out a document from her office she thought the Board would be interested in regarding phased development, etc. Mr. Ruth noted a bill is before the house to extend permits for 2 years. Mr. Jacobs suggested they discuss the March meetings. Mr. Warner asked about the Red Cross dumpsters. Ms. Newman will put it on the next agenda.

Upon a motion made by Mr. Ruth, and seconded by Mr. Warner, it was by the five members present unanimously:  
VOTED: to adjourn the meeting at 10:00 p.m.

Respectfully submitted,  
Donna J. Kalinowski, Notetaker



Ronald Ruth, Vice-Chairman and Clerk